

SUPREME COURT OF ARIZONA

In the Matter of)	Arizona Supreme Court
)	No. R-18-0030
RULE 47.3, RULES OF PROCEDURE)	
FOR THE JUVENILE COURT)	FILED 12/13/2018
CONCERNING CHILD REMOVAL)	
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ORDER

ADOPTING AMENDMENTS TO RULE 47.3, RULES OF PROCEDURE FOR THE JUVENILE COURT CONCERNING CHILD REMOVAL, IN FINAL FORM

On May 18, 2018, the Administrative Office of the Courts filed a petition proposing to amend Rule 47.3, Rules of Procedure for the Juvenile Court Concerning Child Removal, on an emergency basis to conform to recent legislation. On June 8, 2018, the Court adopted the petition as modified on an emergency basis effective July 1, 2018 with a comment period to follow. The Court received only one comment, a comment from petitioner which the Court approves. Upon consideration,

IT IS ORDERED that the attached amendments to Rule 47.3, Rules of Procedure for the Juvenile Court Concerning Child Removal, be adopted in final form.

DATED this 13th day of December, 2018.

_____/s/
SCOTT BALES
Chief Justice

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TO:
Rule 28 Distribution
David K Byers

ATTACHMENT*

(* Additions to text are shown by underscoring, deletions by ~~strikeouts~~.)

Rule 47.3 Court Authorized Removal

A. Purpose. On application under oath by a child safety worker, a child welfare investigator, or a peace officer, the court will determine whether to authorize the ~~applicant~~ Department of Child Safety to take ~~ex parte~~ temporary custody of a child.

B. Burden of Proof. The applicant shall have the burden of stating explicit facts that provide ~~reasonable grounds~~ probable cause to believe:

1. ~~ex parte~~ authorization of temporary custody of the child is clearly necessary to protect the child from suffering abuse or neglect; and
2. remaining in the child's current home is contrary to the welfare of the child.

Additionally, for an Indian child, under 25 C.F.R. § 23.113(b)(1) the facts stated must support a finding that ~~ex parte~~ authorization of temporary custody is necessary to prevent imminent physical damage or harm to the child.

C. Procedure.

1. **Application.** A child safety worker, a child welfare investigator, or a peace officer may apply for authorization for the Department of Child Safety to take ~~ex parte~~ temporary custody of the child by submitting an application in writing to one of the judicial officers designated by the presiding judge of the superior court in Maricopa County to receive and respond to applications under this rule. The application must state:

- (a) the professional qualifications of the applicant,
- (b) the particular reasons each child is presently or imminently in danger of abuse or neglect,
- (c) a detailed account of circumstances that require ~~ex parte~~ authorization of temporary custody including the facts that support the reasons given,
- (d) efforts made to determine the availability of less restrictive voluntary options, including care by a parent or relative, that effectively removes or controls the danger, and

(e) the identity and description of each child ~~to be placed in ex parte~~ for whom temporary custody authorization is sought.

Additionally, under 25 C.F.R. § 23.113(d), if there is reason to know the child is an Indian child, the applicant must provide this information. The information that should be provided under 25 C.F.R. § 23.113(d) should be provided in the dependency petition.

2. **Form.** The application must be submitted in a written format and manner approved by the Administrative Director of the Supreme Court. If an applicant is unable to submit a written application using an approved written format or manner, the applicant may apply for ~~ex parte~~ authorization of temporary custody by recorded oral statement or by other means acceptable to the court made under oath. The recorded oral statement or other means of communication must otherwise comply with this rule.

3. **Evidence.** Evidence presented in support of an application for ~~ex parte~~ authorization of temporary custody may include evidence which is reliable hearsay, in whole or in part.

4. **Consideration.** As soon as possible after receipt of an oral statement or a written application, a designated judicial officer will consider the application ex parte. The judicial officer may question the applicant and any witnesses ~~orally~~. Any additional information shall be submitted ~~or recorded~~ in writing or by a recorded oral statement.

D. Findings and Order.

1. **Content.** The order must state whether there is ~~reasonable grounds~~ probable cause to believe that ~~ex parte~~ authorization of temporary custody of the child is clearly necessary to prevent abuse or neglect, and whether remaining in the child's current home is contrary to the welfare of the child as required by Rule 47.1(A). An order granting an application must ~~include~~: (a) identify the a factual basis for the determination authorizing temporary custody of each child, and (b) ~~the identity and description with reasonable particularity of~~ identify and describe each child with reasonable particularity ~~to be placed in ex parte temporary custody~~.

Additionally, for an Indian child, under 25 C.F.R. § 23.113(b)(1) the court must find that ~~ex parte~~ authorization of temporary custody is necessary to prevent imminent physical damage or harm to the child.

2. Form. If the applicant and judicial officer are not in each other's physical presence, the ~~judge~~ judicial officer may sign the order authorizing ~~ex parte~~ temporary custody using an electronic signature to serve as the original order, orally authorize the applicant to sign the ~~judge's~~ judicial officer's name on the order, or sign an electronically transmitted version of the original order which is then deemed to be the original. The judicial officer will record the time and date of issuance of an orally authorized order on the original order and the applicant will send the duplicate original order to the judicial officer who issued the order.

3. Notice. The ~~applicant~~ Department of Child Safety must provide the parent or other custodian a copy of the ~~ex parte temporary custody~~ application and the order authorizing ~~ex parte~~ temporary custody when ~~and~~ the Temporary Custody Notice (TCN) is provided as required by law unless the Department of Child Safety determines disclosure would cause harm under A.R.S. §§ 8-471, -807(L), or other provisions of state or federal law, and the Department of Child Safety provides notice of the order in the TCN.

4. Execution and Duration. If the child who is the subject of the order is not receiving inpatient care when the order is sought, t~~he~~ applicant Department of Child Safety may execute the order until the earlier of a material change in the factual basis for the ~~reasonable grounds~~ probable cause determination or ten calendar days from the issuance of the order. If the child who is the subject of the order is receiving inpatient care when the order is sought and there is no material change in the factual basis for the probable cause determination, the Department of Child Safety may execute the order until the later of ten days from the issuance of the order or the child's discharge from inpatient care. The temporary custody authorized by the order will expire after 72 hours excluding Saturdays, Sundays and holidays unless a dependency petition is filed. The court with dependency jurisdiction over the child will review continuation of temporary custody as provided in Rules 50 and 51.

5. Filing: The applicant must file the application and order when the dependency petition is filed.